IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.23108 of 2006

and M.P.No.1 of 2006

V.Annappan ... Petitioner

Vs.

The Secretary to Government,
Revenue (Ser.II(2)) Department,
Fort St. George, Chennai 9.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, calling for the records of the respondent in connection with the impugned order passed by the respondent in G.O.2(d) No.246 Revenue (Ser.II(2)) Department dated 07.06.2006 and quash the same.

For Petitioner :Mr.K.Venkataramani
For Respondent :Mr.A.Edwin Prabhakar
Govt.Advocate

O R D E R

This writ petition is filed challenging the order of the respondent in G.O.2(d).No.246 Revenue Department dated 07.06.2006. The case of the petitioner is that he is appointed in Revenue Department as Junior Assistant on 20.05.1971 and his service was regularized as Junior Assistant through the Tamil Nadu Public Service Commission in the year 1979 and thereafter, he was promoted as Assistant in the year 1980 and Deputy Tahsildar in the year 2001. He was subsequently promoted as Tahsildar in the year 2002 and further promoted as Deputy Collector on 17.11.2002 and he attained superannuation on 31.08.2006. He has worked as Personal Assistant to the Special Commissioner and Director of Survey and Settlement between 10.07.2003 to 16.03.2004.

2. According to the petitioner, the Assistant Settlement Officer, Sivaganga has granted patta under the Settlement Act and it was based on such order that the persons in possession of lands applied for transfer of

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patta in the respective Taluk Offices. Since in respect of certain follow-up action regarding grant of patta, a petition was submitted to the Director of Survey and Settlement and at that time, the petitioner working as P.A. to the Director, had to forward the said petition to the concern Tahsildar in respect of grant of patta for proper action. It was for the said conduct of the petitioner, a charge memo came to be issued against him on 22.03.2004 under Rule 17(B) of the Tamil Nadu Civil Service (D&A) Rules containing three charges. The petitioner has submitted his explanation on 1.4.2004 denying the charges and also requested to convert the charge into one under Section 17(B) so as to enable him for being superannuated from service.

3. A criminal case was registered on 27.07.2005 against the Assistant Settlement Officer and others in respect of the issuance of patta on the file of the District Crime Branch, Sivaganga. The petitioner's name did not find a place in the F.I.R. Since the petitioner was asked to appear for interrogation, the petitioner, who got anticipatory bail, has appeared for the investigation. While there was no progress in the criminal case, the impugned order of suspension came to be passed by the respondent on 07.06.2006 on the basis that a criminal case is pending in the Karaikudi District Crime Branch at the F.I.R. stage under Section 424, 466, 468 and 471 I.P.C. for illegal issue of patta involving hundreds of acres of land in Karaikudi Town.

4. According to the petitioner, he was not involved in the issuance of the patta by the Assistant Settlement Officer and it was much after the Assistant Settlement Officer issued the patta, when there was a complaint about the non-implementation of the same made to the Director under whom the petitioner was working as P.A., that the complaint was forwarded by the petitioner to the concerned Tahsildhar to pass appropriate orders.

5. Even though at the first instance the name of the petitioner did not find place in the F.I.R., on the basis of some of the statements given by the co-accused the petitioner's name was included in the criminal case. In these circumstances, the petitioner has challenged the impugned order of suspension on the ground that the reason given for the order of suspension is not valid. Apart from the fact that the petitioner has already submitted a detailed explanation for the charge memo dated 01.04.2004 and no Enquiry Officer has been appointed so far and enquiry has not been commenced for no fault on the part of the petitioner. In the criminal case also, there is no progress and the order of suspension passed against the petitioner at the verge of his retirement is causing hardship to the petitioner.

6. The respondent has filed a counter. While it is true that the former Assistant Settlement Officer, Madurai has issued an order granting patta which was in the year 1995 - 1996, the respondent would state that the same was issued illegally in respect of a vast extend of land

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belonging to the Government to a value of nearly 59.63 crores situated around Alagappa University in Karaikudi Town. During the period 10.07.2003 to 16.03.2004, when the petitioner was working as a Personal Assistant to the Special Commissioner and Director of Survey and Settlement, certain applications were filed by the grantees of patta by the Assistant Settlement Officer to the Director of Survey and Settlement and the petitioner at that time, was fully aware of the fact that the orders of the Assistant Settlement Officer were illegal and inspite of that, has issued instructions to the Tahsildhar, Karaikudi to make necessary changes as per the request by the applicants. Therefore, according to the respondent, it is evident that the petitioner, without routing the said application to the Special Commissioner and Director of Survey and Settlement, has himself sent the same to the concerned Tahsildhar for issuance of patta. In respect of the points raised by the petitioner that the respondent is not competent to issue the order of suspension since authority competent to issue such order as per the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules is the Special Commissioner and Commissioner of Revenue Administration under Rule 17(B), the respondent would state that along with the petitioner, so many other persons were sought to be implicated and therefore, by applying rule 9A of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, the Government being the authority competent to initiate disciplinary proceedings, has passed the impugned suspension order against the petitioner.

7. It is also the case of the respondent that the Collector, Sivaganga has reported that the pendency of the criminal case against five persons, including the petitioner and in fact, the petitioner has obtained anticipatory bail in the Sessions Court and it was based on the said report that the impugned order of suspension came to be passed. While the order of grant of patta by the Assistant Settlement Officer is against the provisions of law, the charge against the petitioner is that the petitioner has forwarded the applications of the grantees to the Tahsildar to take suitable action, knowing fully well that the act of the Assistant Settlement Officer in granting patta in respect of the Puramboke lands to the vast extent of land is invalid.

8. Therefore, according to the respondent, the petitioner is liable for suitable action. The act of issuing patta and recommending the same is a serious one inasmuch as it has resulted in the loss of Rs.56.63 Crores to the Exchequer. It is also the case of the respondent that it is not as if the petitioner is alone placed under suspension, but many other persons who wee involved in the same transaction have also been proceeded against. Therefore, there is no arbitrariness or illegality in the impugned order.

9. Mr.K.Venkataramani, learned counsel for the petitioner would submit that the impugned order of suspension, apart from the fact that the same is illegal and malafide, is without jurisdiction since it cannot be

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sustained as per Rule 9(A) of the Tamil Nadu State Subordinate Service Rules.

10. According to the learned counsel, even assuming that many other persons numbering 5 as stated in the counter affidavit of the respondent are involved in the transaction, it is not as if they belong to various other departments so as to enable the Government to invoke the powers under Rule 9(A) of the Tamil Nadu Civil Service Rules. A reference to all the persons would show that they all belong to the Revenue Department and therefore, there was no question invoking the said Rule as special circumstance and in view of the same, the respondent is not the competent authority to initiate the Disciplinary proceedings or place the petitioner under suspension. That apart, the learned counsel for the petitioner also would rely upon a Government order in G.O.Ms.No.139 Revenue Department dated 27.03.2001 which contemplates the conversion of the Personal Assistants to the Director of Survey and Settlement as Assistant Settlement Officers, enumerating their duties.

11. According to the learned counsel, by converting the post of Personal Assistant to that of the Assistant Settlement Officer under the said G.O. in March 2001, it is the duty of the Assistant Settlement Officer who were earlier holding as Personal Assistant to the Director to consider any petitions filed against the orders passed by the Assistant Settlement Officer earlier, apart from taking necessary steps for the purpose of granting patta in respect of orders already passed. Therefore, according to the learned counsel for the petitioner, the purport of the said G.O. which came into force when the petitioner was holding the post of Personal Assistant to the Director of Survey and Settlement was not that such petitions be forwarded to the Director of Survey and Settlement. Therefore, it has to be assumed that the non-forwarding of such petitions for issuance of patta to the Director of Survey and Settlement is not a misconduct. Even assuming that the petitioner as a Personal Assistant has forwarded to the Tahsildhar with a note, the same is well within his power as per the said G.O. especially in the circumstances that the patta issued by the Assistant Settlement Officer earlier in 1995 - 1996 remains not cancelled and therefore, it was only the duty of the petitioner to see that such orders are implemented. The learned counsel also would submit that what the petitioner has done was not passing any order, but it was only an endorsement made as an office note stating that in respect of said complaints received from the grantee, there was no procedure to dispose of the same and therefore, forwarding all the records to the Tahsildar, Karaikudi for taking action. According to the learned counsel for the petitioner, the said forwarding does not mean that the petitioner has recommended for issuance of patta. According to the learned counsel, there is absolutely nothing on the part of the petitioner as a Personal Assistant converted as the Assistant Settlement Officer to vary the order of the earlier Assistant Settlement Officer, who has issued patta under the Settlement Act. Therefore, according to the learned counsel for the petitioner, on the face of it, there is absolutely no involvement of the

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petitioner in the said charge which is stated in the impugned order of suspension. The learned counsel also would submit about the subsequent events, that the respondent has in fact subsequently framed charges against the petitioner on 31.07.2006 along with many other persons and the petitioner has in fact submitted his detailed explanation to the charges given on 04.08.2006, has requested certain documents to be furnished to him so as to enable him to give a proper explanation and same is pending at that stage. According to the learned counsel, since the petitioner has retired on 31.08.2006, the order of suspension is only causing prejudice to the petitioner.

12. On the other hand Mr.A.Edwin Prabhakar, learned Government Advocate would submit that even a reference to the entire facts and circumstances including the subsequent charge memo framed against the petitioner would show the magnitude of the conduct committed by so many officials in collusion especially with the previous Assistant Settlement Officer who has granted patta in 1995 - 1996 to various persons unauthorisedly in respect of vast extents of land belonging to the Government causing enormous loss to the exchequer. The petitioner who has forwarded the application for implementation of the said order of the Assistant Settlement Officer for issuance of patta to the Tahsildar cannot claim innocence especially in the circumstances that the petitioner is aware of the large scale illegality committed in granting of such patta.

13. In view of the seriousness of the conduct, a thorough enquiry is contemplated and therefore, it cannot be said that the respondent has no power to issue such order of suspension. He would also contend that since various persons were involved along with the petitioner, the respondent has issued the order, being the highest authority and there is nothing wrong in issuing such order of suspension when admittedly the respondent is a higher authority than even the persons who are competent to issue such order in respect of the petitioner. Merely because the respondent has issued the impugned order, the impugned order will not itself become infructuous.

14. I have considered the rival submissions and perused the records.

15. A reference to the said G.O.Ms.139 Revenue Department dated 27.03.2001 produced by the learned counsel for the petitioner would show that the post of Personal Assistant to the Director has been changed as Assistant Settlement Officer empowering to conduct enquiry, apart from passing orders on appeals regarding the land revenue matters. No doubt, the impugned order of suspension has been passed by the respondent who is a higher authority in the department as per Rule 9A of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules on the basis that in addition to the petitioner, there are so many other persons involved, against whom action has to be taken. Even though it is the contention of the learned counsel for the petitioner that all other 5 persons who are stated in the counter affidavit, against whom the action was taken, belong

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to the same department, I am able to see that the petitioner and another person called R.Ganesh Singh, where in the Survey and Settlement Department, while the other person was Tahsildar, apart from another person who was Assistant in the Taluk Office and another as the Village Administrative Officer. Therefore, there is substance in the contention of the learned counsel for the respondent that by invoking Rule 9A as stated above, the respondent has genuine authority to pass orders, being the highest authority. Therefore, I do not think that the impugned order of suspension can be interfered with on that basis.

16. The next question that is to be considered is as to whether there is any remote involvement of the petitioner in the subject mentioned in the impugned order. The impugned order proceeds on the basis that as a Personal Assistant to the Director, when the persons who were given patta by the previous Assistant Settlement Officer have made complaints to the Director, the petitioner being the Personal Secretary, instead of forwarding the same to the Director, has straight away given a note to the Tahsildar to consider and take further action and therefore, this amounts to not only misconduct, but also indirectly directing the revenue officials namely the Tahsildar to issue patta and therefore, it cannot be said that the petitioner was not at all involved in the same. In this regard, the contention of the learned counsel for the petitioner is that at the relevant point of time when the patta was issued to the grantees, he was not Assistant Settlement Officer and therefore, there cannot be any suspicion about the petitioner's comments being accepted in toto. The charge in this case is not that the petitioner has issued patta, but thereafter, when a complaint was given to the higher authorities, the petitioner who while working as a Personal Assistant to such higher authority, has directly given a note to the Tahsildar who was expected to pass consequential orders of issuance of patta and therefore, it can never be said as if the petitioner has nothing to do with the charge.

17. Now that a said charge memo has been issued against the petitioner on 31.07.2006 as stated above by the learned counsel for the petitioner himself, for which the petitioner has in fact submitted his letter on 04.08.2006 seeking certain particulars, I am of the considered view that instead of interference with the impugned order of suspension at this stage, a direction should be given to the respondent to complete the enquiry based on the said charge memo dated 31.07.2006 as pass appropriate orders, which will serve the ends of justice.

18. In view of the same, the respondent is directed to furnish all necessary materials as requested by the petitioner as per the letter of the petitioner dated 04.08.2006 as a reply to the charge memo dated 31.07.2006 within a period of two weeks from the date of receipt of a copy the order. After receiving such document, the petitioner shall submit his explanation to the charges within a period of two weeks thereafter and after receiving the explanation, the respondent shall pass appropriate final orders after giving opportunity to the petitioner within a period of

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four weeks and also depending upon the order that may be passed, the suitable action should be taken by the respondent in respect of the impugned suspension order.

The writ petition is disposed of on the above terms. No Costs. Consequently, connected W.P.M.P.is closed.

This Writ Petition having been set down this Friday, the fifteenth day of December 2006 for 'Being Mentioned' pursuant to the order of this Court dt. 25.9.2006 and made in WP.23108/2006 and in the presence of Mr.K.Venkataramani, Counsel for the petitioner and Mr.D.Sriniasan, Govt. Advocate for the Respondent, the Court made the following Order:

This matter is listed today under the caption 'for being mentioned'.

2. By my order dated 25.09.2006 in WP.No.23108/2006, which was relating to the challenge of the order of suspension dated 07.06.2006 passed by the respondent, after detailed discussions about the entire facts, I have decided, as it is seen from para 15 of the order, that there is nothing to be interfered with.

3. However, in the subsequent paragraphs, after discussing about the subsequent charge memo issued by the respondent dated 31.07.2006, I have directed the authorities to pass final orders after conducting enquiry. It is the case of the petitioner that in respect of the charge memo dated 31.07.2006, which was not the issue involved in this writ petition, the petitioner has filed another WP.No.27869 of 2006 and this Court while ordering notice of motion, has granted interim stay of charge memo dated 31.07.2006. Therefore, further direction given in WP.No.23108/2006 goes against the order passed in WP.No.27869/2006. In view of the same and especially taking into consideration that WP.No.23108/2006 is only relating to the order of suspension dated 07.06.2006 and I have taken a decision that the said suspension order is not invalid and cannot be interfered with, it is made clear that paragraphs 16, 17 and 18 of the order dated 25.09.2006 are deleted, and after para 15 of the said order dated 25.09.2006, it shall be stated that the writ petition fails and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
The Secretary to Government,
Revenue (Ser.II(2)) Department,
Fort St. George, Chennai 9.

+ 1 CC To Mr.K.Venkataraman, Advocate SR NO. 63391

+ 1 CC to the Government Pleader SR NO 45043

W.P.No.23108 of 2006
and M.P.No.1 of 2006

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